



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Ratifying Employment Agreement Entered into Between City Manager Blair King and Fire Chief Kevin Donnelly

MEETING DATE: January 20, 2010

PREPARED BY: City Manager

RECOMMENDED ACTION: Adopt resolution ratifying the terms of the employment agreement entered into between City Manager Blair King and Fire Chief Kevin Donnelly.

BACKGROUND INFORMATION: Lodi Municipal Code Section 2.12.060 vests with the City Manager the power to select subordinate staff. The City Manager has selected Kevin Donnelly to serve as the next Fire Chief for the City of Lodi. It has been the City Manager's practice to offer employment agreements to executive management staff and it is respectfully requested that the Council ratify the employment agreement with Mr. Donnelly. All other department heads have employment agreements. Some of the proposed terms and conditions contained in the employment agreement extend beyond the Manager's authority and therefore requires ratification by the City Council. The proposed agreement is similar to that of other department heads.

Mr. Donnelly has served as Interim Fire Chief since the retirement of former Fire Chief Mike Pretz in June 2009. Mr. Donnelly has proven himself, has served in the Lodi Fire Department for the past 19 years, has experience in nearly every classification in the Fire Department including administration, has the support of the Department, and the confidence of the City Manager.

Former Chief Pretz took advantage of early retirement. Consequently, the City must leave a generally comparable position unfilled for a period of time.

With regard to the agreement, of particular interest to the Council is the following:


- The proposed Employment Agreement provides a six-month severance if the Fire Chief is terminated without cause;
- Provides base salary in the amount of \$145,000, (note: this is not an increase in pay for Mr. Donnelly, but reflects a roll-up of all previous pay and incentives, additionally, Mr. Donnelly will be subject to reductions and furloughs as all other management employees);
- Provides for a minimum differential between the Chief and subordinate employees of 10% including incentives and/or differentials;
- Vehicle provided for work-related use;
- One-time uniform allowance that will not reoccur in any subsequent years.

A copy of the Employment Agreement is attached.

APPROVED: _____

Blair King, City Manager

FISCAL IMPACT: The selection of Mr. Donnelly avoids incurring a search cost in the amount of approximately \$25,000 - \$30,000. The Manager does not intend to backfill Mr. Donnelly's previous Division Head position saving approximately \$197,000 annually. A well qualified, competent Fire Chief is a significant asset. The salary does not represent a pay increase for Mr. Donnelly.


Blair King
City Manager

Attachment

EMPLOYMENT AGREEMENT

Executive Management Exempt Service

Fire Chief

THIS AGREEMENT entered into on _____, by and between the CITY OF LODI, a municipal corporation (hereinafter referred to as "City") and Kevin Donnelly, an individual (hereinafter referred to as "Employee").

WHEREAS, City desires to employ the services of Employee as Fire Chief; and

WHEREAS, Employee desires to serve as Fire Chief for the City beginning January 25, 2010; and

WHEREAS, City and Employee agree in writing to the terms and conditions of employment as Fire Chief; and

WHEREAS, Employee and City agree and acknowledge that Employee's employment as Fire Chief is his sole and exclusive employment with City, and that their employment relationship is governed solely and exclusively by this Agreement.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

1. Employment: City agrees to employ Employee as Fire Chief, in accordance with the following provisions:

(a) Employee shall serve as Fire Chief, and shall be responsible for managing and directing the operations of the Fire Department.

(b) Employee shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by the City.

(c) Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Employee shall comply fully with his reporting and disclosure obligations under regulations promulgated by the Fair Political Practices Commission (FPPC).

(d) Employee agrees to remain in the exclusive employ of the City during the term of this Agreement. Employee shall dedicate his full energies and qualifications to his employment as Fire Chief, and shall not engage in any other employment except as may be specifically approved in writing in advance by the City Manager.

2. Maintenance of Professional Expertise: To promote continued professional growth and benefit to the City, Employee shall, at City expense and consistent with budgetary

constraints: maintain professional licenses and certifications, maintain membership in professional organizations related to Fire administration and related professional disciplines; attend workshops, seminars and other similar activities designed to advance Employee's professional development; and, represent the City in professional associations and other organizations.

3. Resignation or Termination:

(a) Employee may resign at any time and agrees to give City at least 30 days advance written notice of the effective date of his resignation. In such event, Employee shall not be entitled to severance pay as provided in Paragraph 4 herein.

(b) The parties recognize and affirm that Employee may be terminated by the City Manager with cause, which shall mean gross insubordination, incapacity, dereliction of duty, conviction of any felony or any crime involving acts of moral turpitude or involving personal gain to him, or material breach of this Agreement. In such event, Employee shall not be entitled to severance pay as provided in Paragraph 4 herein.

(c) The parties recognize and affirm that Employee may be terminated by the City Manager without cause. In that event, and only in that event, Employee shall be entitled to severance pay as provided in Paragraph 4 herein.

(d) In the event of termination and in recognition of Employee's professional status and integrity, Employee and the City Manager shall prepare a joint public statement to be made by the City Manager. This employment relationship is based on the mutual respect between the parties and a desire to maintain the highest degree of professionalism. In communicating with third parties about the parties' employment relationship and the circumstances under which it may have been severed, the parties shall (a) protect and advance their mutual respect and professionalism, and (b) refrain from making statements that would negatively impact either party.

(e) Employee may choose to resign or retire his office instead of being terminated if agreed to by the City Manager. In such an event the public announcement, as provided for in Paragraph 3 (d) above, will note Employee has resigned or retired. The provisions of Paragraph 3 (d) shall remain applicable.

4. Severance Pay: If Employee is terminated by the City Manager without cause while still willing and able to perform the duties of Fire Chief, City agrees to pay Employee a cash payment equal to six (6) months' aggregate salary and the City's cost of six (6) months' health insurance benefits only (no other benefits will be accrued or converted to a cash equivalent) subject to reduction as set forth in this Paragraph 4. The severance payment will be paid in installments coinciding with the City's regular paydays during the severance period and subject to customary withholdings. In the event Employee retains new employment during the six-month severance period, any remaining severance payment will be forfeited as of the date Employee begins his new employment. To be eligible for such severance pay, Employee shall fulfill all of his obligations under this Agreement, and shall sign an Acknowledgment and Release of Claims against the City in a form acceptable to the City Attorney. Payment under this Paragraph 4 will release City from any further obligations under this Agreement, or any other transaction between the parties.

5. Employment as Department Head is Sole Employment with City: Employee further represents and acknowledges that his employment as Fire Chief is his sole and exclusive employment with the City. Employee has no right to any other exempt position with the City or to any employment in the classified service.

6. Salary:

a) City agrees to pay Employee \$145,000.00 in salary per annum for his services, payable in installments at the same time as other employees of the City are paid and subject to customary withholding.

(b) Each year the City Manager will conduct an annual review of the Employees performance and may grant an annual salary or incentive increase.

(c) Subject to Employee's satisfactory performance, City shall maintain a minimum 10% differential between Employee and the next highest paid subordinate including incentives.

7 Benefits: The City shall provide Employee the same benefits as provided to management employees in accordance with the terms of the Executive Management Statement of Benefits dated 1998 and as they may be amended, increased or decreased, except as modified herein. These are the sole and exclusive benefits to be provided to Employee. Any improvement or modification of such benefits may only be made by written instrument signed by the City Manager. As used herein, benefits include, but are not limited to: vacation, sick leave, holidays, administrative leave, retirement, vision insurance, health insurance, dental insurance, long-term disability insurance and life insurance. Employee's vacation leave shall be calculated based upon his actual years of service with the City, increasing from there as provided in the Executive Management Statement of Benefits. Moreover, Employee shall retain all sick leave and vacation leave he has accrued as Fire Division Chief but at his new pay rate and earn sick leave conversion based upon his initial date of employment with the City. Employee will also earn and accumulate sick leave at the same rate as a Lodi Fire Division Chief. Employee may participate in City's deferred compensation program. City contributes up to a maximum of three percent (3%) of base salary.

7. Performance Evaluation: The City Manager shall review and evaluate the performance of Employee each year and set goals and objectives for the ensuing year. Such review and evaluation shall be in accordance with specific criteria developed in the performance plan in consultation with Employee and the City Manager.

10. Assignment: Employee shall not assign any of the duties and responsibilities, or obligations of this Agreement except with the express written consent of the City Manager.

11. Authority to Work in the United States: Employee represents, under penalty of perjury, that he is authorized to work in the United States. In accordance with §274A (8 USC 1324) of the Immigration Reform and Control Act of 1986 before this Agreement can become effective, Employee must provide documentary evidence to City consistent with the Act, that he is legally entitled to work in the United States, and must execute the verification required by that Act.

12. Cell Phone/Vehicle/Uniform Allowance: Employee will be provided with a Cell Phone for employment related use at the City's expense on terms consistent with other Executive Managers. Employee will also be provided with a vehicle for work related use. Employee will also be provided with a one time uniform allowance of \$800. that will not recur in any subsequent renewals of this contract.

13. Notice: All notices required herein shall be sent first class mail to the parties as follows:

To **CITY:**

Blair King, City Manager

City of Lodi
P. O. Box 3006
Lodi, CA 95241-1910

To **EMPLOYEE:**

Kevin Donnelly

Lodi, California 95242

Notice shall be deemed effectively served upon deposit in the United States mail.

14. Entire Agreement: This Agreement contains the entire agreement between the parties hereto. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied on by any party hereto. This Agreement may only be amended by written instrument signed by Employee and the City Manager and specifically approved by the City Council in open session.

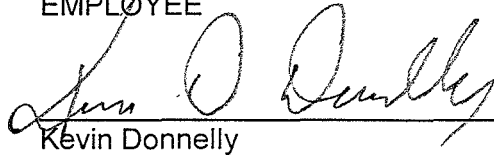
15. Severability: If any provision of this Agreement is invalid or unenforceable, it shall be considered deleted herefrom and the remainder of this Agreement shall be unaffected and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written above.

CITY OF LODI, a municipal corporation

EMPLOYEE

Blair King
City Manager


Kevin Donnelly

ATTEST:

By: _____
Randi Johl, J.D.
City Clerk

APPROVED AS TO FORM:

D. Stephen Schwabauer
City Attorney



RESOLUTION NO. 2010-08

A RESOLUTION OF THE LODI CITY
COUNCIL RATIFYING THE FIRE CHIEF
EMPLOYMENT AGREEMENT

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby ratify the Employment Agreement entered into between the City Manager and Fire Chief Kevin Donnelly; and

BE IT FURTHER RESOLVED that the term of this Agreement shall commence January 25, 2010.

Dated: January 20, 2010

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I hereby certify that Resolution No. 2010-08 was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 20, 2010, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, and Mayor Katzakian

NOES: COUNCIL MEMBERS – Hitchcock and Mounce

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk